

Open Records Decision No. 356
December 31, 1982

Re: Availability of report on policeman's misconduct to subject of report

Mr. Jake Talley, Jr.
Assistant City Attorney
City of San Antonio
P.O. Box 9066
San Antonio, Texas 78285

Dear Mr. Talley:

Your request for our decision under the Open Records Act, article 6252-17a, V.T.C.S., concerns the following facts. In February, 1981, a police lieutenant prepared a report concerning the conduct of one of his detectives and submitted it to the chief of police. The detective was shown a copy of the report, and he responded by contending that it contained false statements about him. He asked that it be expunged from his personnel file, and this request was granted. The chief of police subsequently investigated the charges made by both the lieutenant and the detective, but found no evidence of wrongdoing. The detective has now requested a copy of this report.

Although you do not indicate what became of this report after it was Aexpunged@ from the detective's personnel file, we must assume that it is being kept elsewhere in the department's records. Section 12 of article 6252-17a provides as follows:

Any person who wilfully destroys, mutilates, removes
without permission as provided herein, or alters public records
shall be guilty of a misdemeanor. . . .

This section would clearly prohibit the department from completely eliminating the report from its records. See also Attorney General Opinion MW-327 (1981).

Section 3(a) of the Open Records Act provides that:

All information collected, assembled, or maintained by
governmental bodies pursuant to law or ordinance or in
connection with the transaction of official business is public
information and available to the public . . . with the following
exceptions only: . . . (Emphasis added).

Whether or not this report is technically deemed to be part of the detective's personnel file, it clearly constitutes information Acollected, assembled, or maintained by@ a governmental body within the meaning of section 3(a). Such

information is expressly made public unless it falls within at least one of the enumerated exemptions. Section 7(a), moreover, imposes a duty on the governmental body to inform this office of the exception or exceptions which it believes applies. Because you have cited no exception and made no argument in making an exception, we conclude that the report must be made available to the detective. We do not consider its availability to other persons.

Very truly yours,

Mark White
Attorney General of Texas

John W. Fainter, Jr.
First Assistant Attorney General

Richard E. Gray III
Executive Assistant Attorney General

Prepared by Jon Bible
Assistant Attorney General

APPROVED:
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